

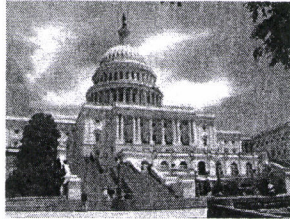


Legislatures &amp; Elections » Elections &amp; Campaigns » Vacancies in the United States Senate

Go 18423

Share Comment

## Filling Vacancies in the Office of United States Senator



Last updated January 10, 2013

Unlike vacancies in the U.S. House of Representative, which must be filled according to federal law, the U.S. Constitution gives states the ability to choose how to fill vacancies in the U.S. Senate. All states do so through an election, but they vary in two ways: whether the vacancy is filled at a regularly-scheduled election, or at a special election; and whether the governor can make an appointment to fill the vacancy during the period before the election occurs.

Presently, most states -- 36, to be exact -- fill a U.S. Senate vacancy at their next regularly-scheduled general election. The remaining 14 require that a special election be called. And only four states prohibit the governor from making an interim appointment, requiring instead that the seat remain vacant until the next election (whether regular or special) is held. In another three, the governor may make an appointment to fill the vacancy temporarily, but only under very strict conditions.

### Table of Contents

- [Overview](#)
- [Gubernatorial Appointment](#)
- [Special Election](#)
- [Recent Legislative Action](#)
- [Federal Laws](#)

### NCSL Contact

- [NCSL elections staff](#)

## Vacancies Filled by Gubernatorial Appointment

In the following 36 states, the governor makes an appointment to fill a U.S. Senate vacancy, and the appointee serves until the next regularly-scheduled, statewide general election. The person elected at that next regularly-held general election serves for the remainder of the unexpired term, if any. If the term was set to expire at that general election, the person elected serves a full six-year term.

Arizona (1)	Kentucky	New York (2)
California	Maine	North Carolina
Colorado	Maryland	North Dakota
Delaware	Michigan	Ohio
Florida	Minnesota (2)	Pennsylvania
Georgia	Missouri	South Carolina
Hawaii (1,2,3)	Montana	South Dakota
Idaho	Nebraska	Tennessee
Illinois	Nevada	Utah (1)
Indiana	New Hampshire	Virginia (2)
Iowa	New Jersey (2)	West Virginia
Kansas	New Mexico	Wyoming (1)

(1) The governor's appointee must be of the same political party as that of the vacating Senator.

(2) If the vacancy occurs before a specified date preceding the regular primary (HI: 60 days; MN: 6 weeks; NJ: 30 days; NY: 59 days; VA: 12 days), the election is held in the following November; if the vacancy occurs within the specified period preceding the regular primary, the vacancy election is held at the second November election after the vacancy occurs.

(3) The governor makes an appointment by selecting from a list of three prospective appointees submitted by the party.

## Vacancies Filled by Special Election

In contrast to the states above (which wait until the next regularly scheduled statewide general election to fill a vacancy in the office of U.S. Senator), the 14 states listed below require that a special election be held to fill a vacancy in the office of U.S. Senator. Nine of these states allow the governor to make an interim appointment (with specific restrictions in three), but these are short-term appointments as in most cases, a special election is held within a few months. In the remaining four states (**Oklahoma, Oregon, Rhode Island, and Wisconsin**), the seat remains vacant until filled by the voters at a special election.

State	Interim Gub. Appt.?	Special Election Must be Held
Alabama	Yes	On such a day as the governor may direct, unless vacancy occurs between 2 and 4 months before the next regularly-scheduled general election, in which case it is held at that election. If vacancy occurs within 60 days of the next regularly-scheduled general election, a special election must be held on the first Tuesday after 60 days have elapsed since the vacancy occurred.
Alaska	Yes	60-90 days after vacancy occurs

Arkansas	Yes (1)	Not more than 120 days after vacancy occurs
Connecticut	Yes (2)	160 <sup>th</sup> day after vacancy occurs (excluding weekends), unless vacancy occurs between the 125 <sup>th</sup> and 63 <sup>rd</sup> days preceding a regularly-scheduled November general election, in which case vacancy is filled at that election
Louisiana	Yes (3)	on specific dates provided by law, not less than 11 weeks after the governor's proclamation
Massachusetts	Yes	145-160 days after vacancy occurs
Mississippi	Yes	Within 100 days of when governor receives official notice of vacancy, unless vacancy occurs in the year of a general state or congressional election, in which case the vacancy is filled in that election
Oklahoma	No	Special primary must be held not less than 53 days after vacancy occurs; runoff primary occurs not less than 20 days later, and general election not less than 20 days after runoff primary; if vacancy occurs after March 1 in an even year, vacancy is filled at regular primary and general election dates
Oregon	No	"as soon as practicable"
Rhode Island	No	At as early a date as is in compliance with the provisions of law. If vacancy occurs between July 1 and October 1 in an even-numbered year, the special election to fill the vacancy is held concurrently with the regularly-scheduled general election.
Texas	Yes	If vacancy occurs in an even year on or before the 62 <sup>nd</sup> day before the primary, remainder of term is filled at next regular general election. If vacancy occurs after 62 <sup>nd</sup> day before the primary in an even year, or in an odd year, special election is held on the first uniform election date occurring on or after the 36 <sup>th</sup> day the election is ordered
Vermont	Yes	3 months following vacancy, unless vacancy occurs within 6 months of the general election, in which case the vacancy is filled at the general election
Washington	Yes	not less than 100 days following vacancy, unless vacancy occurs within 6 months of the general election, in which case the vacancy is filled at the general election
Wisconsin	No	between 62 and 77 days after date of order of special election, unless vacancy occurs between the 2 <sup>nd</sup> Tuesday in May and the 2 <sup>nd</sup> Tuesday in July in an even year, in which case the vacancy is filled at the regular primary and general elections

(1) Governor may make a temporary appointment only if the next statewide general election is scheduled to be held more than 60 days and less than 12 months after the vacancy occurs.

(2) Governor may make a temporary appointment only in cases where a vacancy occurs after the municipal election in the year preceding the last year of the term or in the last year of the term of a senator. Approval of such nomination requires an affirmative vote of two-thirds of the membership of each chamber of the General Assembly.

(3) If the unexpired term is more than one year, an appointment to fill the vacancy shall be temporary. Any senator so appointed shall serve until his successor is elected at a special election and takes office.

### Recent Legislative Action

- In 2012, five states considered but did not pass legislation dealing with U.S. Senate vacancies.
- In 2011, three states considered but did not pass legislation dealing with U.S. Senate vacancies.
- In 2010, seven states considered legislation to change the way vacancies in the U.S. Senate are filled; none of that legislation passed.
- In 2009, 12 of the states that currently permit the governor to fill U.S. Senate vacancies by appointment considered legislation to take away that authority and require a special election instead. **Connecticut** and **Rhode Island** passed legislation along these lines; in **Colorado**, **Maryland**, **Missouri**, and **North Carolina**, the bills failed to pass. In **Illinois**, **Iowa**, **Minnesota**, **New York**, **Ohio** and **Pennsylvania**, the bills carried over to the 2010 legislative sessions. In **Massachusetts** a bill was passed in response to the death of Senator Edward Kennedy and his request that the current law be changed. Previous law in Massachusetts called for a special election to be held, but not until five months after the vacancy occurs. The new law retains the special election, but permits the governor to appoint a temporary successor in the interim.
- In 2008, bills addressing U.S. Senate vacancies were introduced but failed to pass in **Massachusetts**, **Minnesota** and **Rhode Island**. In **Kansas**, the legislature passed a bill removing the governor's authority to make an appointment to fill a vacancy in the office of U.S. Senator, but it was vetoed by the governor.

### Federal Laws



Article I of the U.S. Constitution, amended by the 17th Amendment, and one section of the U.S. Code relate directly to how states may fill vacancies in the U.S. Senate.

*U.S. Constitution, Article I, Section 3*

...If vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

*U.S. Constitution, 17th Amendment*

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

*2 U.S.C. Section 8. Vacancies*

The time for holding elections in any State, district, or territory for a Representative or Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and territories respectively.

---

**Denver Office**

Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place |  
Denver, CO 80230

---

**Washington Office**

Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 |  
Washington, D.C. 20001

©2013 National Conference of State Legislatures. All Rights Reserved.